



**United Nations
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Mediterranean Action Plan**

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19th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

Athens, Greece, 4-5 July 2023

Agenda Item 2: Adoption of the Agenda and Organization of Work

Report of the 18th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols, Athens, Greece, 29-30 June 2022

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18th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

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Report of the Meeting

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Agenda Item 1: Opening of the Meeting

1. The 18th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols was held on 29-30 June 2022, in Athens, Greece. The list of participants is at **Annex I** to this report.
2. Having the Secretariat ascertained the existence of the required quorum, Odeta Cato, Chairperson of the Compliance Committee, welcomed the participants and opened the meeting by pointing out at the demanding agenda before the Committee dictated by its 2022-2023 Programme of Work adopted by the 22st Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (COP 22) (Antalya, Türkiye, 7-10 December 2022).
3. Ilias Mavroeidis, Programme Management Officer-Governance, welcomed the participants and expressed the pleasure of the Committee being back to in person meetings, following the challenging times defined by the global COVID-19 pandemic. He stressed that decisions at the present meeting were of pivotal importance in strengthening the role of the Committee for the biennium 2022-2023 and underlined the key priorities of the rich agenda before the Committee. First of all, to come to a conclusion concerning the communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance. Following 4 years of proceedings, including by involving the active participation of Spain, the adoption of a decision would send a clear signal of the Committee's commitment to ensuring compliance with the Barcelona Convention and its Protocols. This would show Contracting Parties and the international community the responsiveness and effectiveness of the Committee in dealing with a first-ever communication and would constitute a significant precedent in the area of environmental conservation.
4. Furthermore, the importance of the follow-up to COP Decision IG.25/2 on amendments to the Procedures and Mechanisms and the Rules of Procedure was highlighted. In light of this decision, the Compliance Committee was expected to discuss its role in further assisting States and contributing to the work that the COP has asked the Secretariat to undertake. Finally, the Committee should decide on the use of the criteria of submission, timeliness, completeness and implementation as a screening tool for the preliminary assessment of national implementation reports submitted for the biennium 2020-2021.

Agenda Item 2: Adoption of the Agenda and Organization of Work

5. The Chair of the Compliance Committee introduced the Provisional Agenda of the meeting and underlined the tight and broad agenda ahead. She stressed the importance and relevance to reach a decision under agenda item 4 at the present meeting and echoed the potential options before the Compliance Committee as referred to by the Secretariat.
6. The Compliance Committee adopted the Provisional Agenda (UNEP/MED CC.18/1) and the Provisional Annotated Agenda (UNEP/MED CC.18/2) without amendment. A copy of the Provisional Agenda submitted to the meeting is presented at **Annex II** to this report.
7. In line with the Rules of Procedure of the Compliance Committee (Decision IG. 21/1), the Compliance Committee formally adopted the report of the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021) (UNEP/MED CC.18/3).

Agenda Item 3: Election of Officers of the Compliance Committee for the biennium 2022-2023

8. The Compliance Committee was invited to elect a Chairperson and two Vice-Chairpersons from among its Members for the biennium 2022-2023, in accordance with Rule 10 of its Procedures and Mechanisms and Rule 6 of its Rules of Procedure.

9. The Programme Management Officer-Governance, stressed that, in line with the Procedures and Mechanisms on Compliance and the Rules of Procedure of the Compliance Committee, equitable geographical representation and rotation had informed the election of the Chair of the Compliance Committee since its inception in 2008, making sure that all Groups were represented on a rotational basis. The Secretariat highlighted that equitable geographical representation and rotation shall be determining factors in electing the Chair of the Compliance Committee. The Secretariat orally informed the meeting of the Members of the Compliance Committee elected by COP 22 until COP 24.
10. In the ensuing discussion, the Compliance Committee considered the expression of interest of members from all Groups to be elected as Chair or Vice-Chairs.

Conclusions and Recommendations

The Compliance Committee elected for the biennium 2022-2023 the following officers:

- **Ms. Heba Salah el din SHARAWY (Group I) as Chairperson of the Compliance Committee;**
- **Mr. Evangelos RAFTOPOULOS (Group II) as Vice-Chairperson of the Compliance Committee;**
- and**
- **Ms. Aysin TURPanci (Group III) as Vice-Chairperson of the Compliance Committee.**

Agenda Item 4: Communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance: Proceedings

11. The Secretariat reminded participants that the Committee at its 17th Meeting (Teleconference, 10-11 June 2021), held proceedings relating to the communication under paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Procedures and Mechanisms). The proceedings originated from a communication by Ecologistas en Acción de la Región Murciana (EARM) (the communicant), concerning potential non compliance by Spain (the Party concerned) with respect to the situation of Mar Menor. In the course of the meeting, the Party concerned was heard. Following the proceedings and the closed doors discussion, the Committee concluded that more time was needed to deliberate on the comprehensive information provided by the Party concerned to reach an outcome (UNEP/MED CC. 18/3, § 39).
12. The 18th Meeting of the Compliance Committee considered all the information received in relation to the communication by Ecologistas en Acción de la Región Murciana (EARM), with a view towards reaching conclusions with respect to the communication. The Chair of the Committee opened the proceedings, briefly recalling the relevance of the matter, which constitutes the first individual procedure concerning potential non-compliance according to the Procedures and Mechanisms of the Barcelona Convention and its Protocols. On the invitation of the Chair, the Rapporteur presented the past steps undertaken by the Committee concerning examination of the matter. The Secretariat then provided a brief overview of the procedure for the adoption of a decision concerning the communication, as provided for in the Procedures and Mechanisms and the Rules of Procedure of the Compliance Committee, and as detailed in document UNEP/MED CC. 18/4.
13. In the ensuing discussion, the Compliance Committee focused on the necessity to reach a decision on the communication, as well as on the content of the decision. Following these discussions, the Chair identified that there was consensus among the members of the Committee concerning the necessity to adopt a decision and that three elements seemed shared by all members of the committee, which could all be included in the decision of the Committee: (1) the Compliance Committee considered that there has been a situation of non-compliance, especially at the time when the communication reached the Secretariat; (2) the Compliance Committee concluded that the Party concerned has undertaken serious efforts in ensuring compliance with the Provisions of the Barcelona Convention and the

SPA/BD Protocol, in particular through the adoption of legislation and administrative, financial and judicial actions. These actions have, to a certain extent, favoured an amelioration of the situation in Mar Menor which supports the findings of the Committee that the Party concerned should be strongly encouraged to continue and intensify its actions; (3) the Compliance Committee concluded that the Party concerned is still facing difficulties in implementing the SPA/BD Protocol regarding the SPAMI Mar Menor. The Compliance Committee could then offer its advice to the Party concerned with respect to the measures and other activities that should still be adopted and, more generally, to support to the Party concerned in its progressive compliance with the Barcelona Convention and SPA/BD Protocol. This should lead to an invitation to the Party concerned to update the 19th Meeting of Compliance Committee in June 2023 on progress following the present meeting and submit via the Barcelona Convention Reporting System the relevant information.

14. The Chair then invited the Rapporteur to share with members of the Committee a draft decision prepared with the Secretariat. The Rapporteur first presented the structure of the draft decision, which introduced the matter, provided the procedural, factual and legal background to the case, and addressed alleged non-compliance concerning the three allegations made by the communicant, namely (1) The Management Plan (SPA/BD Protocol: Article 3.4, Article 7.2 (a) and section D annex I); (2) Protection of Flora and Fauna and Prevention of Pollution (Barcelona Convention: Article 10 and SPA/BD Protocol: Article 3.1(b), Article 11.1 and 2 and Article 6(b)); and (3) Coordination Mechanisms (SPA/BD Protocol: Article 7.2 (a) and section D annex I and ICZM Protocol: Article 7).
15. The Committee then examined each allegation separately, extensively discussing the information provided by the communicant and the Party concerned, also in the course of the proceedings with the Party concerned during the 17th Meeting of the Compliance Committee, the applicable legal framework, as well as the aims and purposes of the compliance procedure, as regulated in the Procedures and Mechanisms. The following issues were particularly discussed:
 - a) With respect to the relevant legal instruments, the Committee agreed that reference should be made primarily to the legal instruments recalled in the communication, namely the Barcelona Convention and SPA/BD Protocol. Some members considered that other legal instruments could be relevant in assessing compliance and identifying recommendations, in particular the Land-based sources Protocol and the ICZM Protocol. The Committee concluded that the outcome should refer primarily to the Barcelona Convention and SPA/BD Protocol, while other instruments could be mentioned where relevant.
 - b) With respect to the substantial obligations pending upon the Party, the Compliance Committee agreed that these included not only procedural obligations (e.g. the adoption of plans, laws and regulations) but also a number of other substantial obligations of an administrative, enforcement, financial, practical and judicial character, with the aim of ensuring the good environmental status of Mar Menor. Compliance by the Party should therefore be assessed not only with respect to legislative acts, but also with respect to other potential action and its effects on the conservation status of Mar Menor.
 - c) Members of the Committee generally agreed that a distinction should be made, in assessing compliance, between the period prior to the submission of the original communication by the communicant in 2017, and the period following it, in particular since 2019. Before 2017, few and occasional actions had been taken in order to address the pollution of Mar Menor and the ensuing eutrophication, and this pointed towards a situation of non-compliance by the Party concerned. Starting from 2017, the Party concerned had adopted a number of legislative and other measures, which addressed the situation in Mar Menor and which had produced positive results. At the same time, and as also illustrated by the Party concerned in the course of the 17th Meeting of the Compliance Committee, Mar Menor still suffered from eutrophication and the recovery of the groundwater body of Campo de Cartagena was expected to reach potential by the year 2039. The Party concerned stressed that this is a steadily process with the interim

target of Mar Menor achieving a good state by 2027. Consequently, different members of the Compliance Committee pointed out the fact that in the years following 2017, the Party concerned had started to progressively comply with its obligations under the Barcelona Convention and its Protocols. The Compliance Committee agreed that the efforts of the Party should be commended and that it was the role of the Committee, as set out in the Procedures and Mechanisms, to assist the Party in this complex task. At the same time, and as pointed out by some members of the Committee, the Committee agreed that the current situation of Mar Menor, which still presents criticalities, would not allow for a decision of full compliance with the obligations pending under the Barcelona Convention and Mar Menor.

16. Based on these discussions, the Compliance Committee elaborated conclusions concerning the allegations in the communication, discussing both their content and its relationship with the rest of the outcome document. The draft outcome document was then shared with all members of the Compliance Committee present in its 18th Meeting. On the basis of the comments received by members on different aspects of the outcome document, the Compliance Committee then held a final debate, leading to the finalization and adoption of the Findings and Recommendations concerning Compliance by Spain (Annex III to this Report).
17. The Compliance Committee then discussed the next steps following adoption of the Findings and Recommendations. The Secretariat recalled that, according to paragraph 29 of the Procedures and Mechanisms, the Compliance Committee shall, through the Secretariat, notify the Party concerned of its draft findings, measures and recommendations in writing within two weeks from the date of their completion. According to Rule 31(2) of the Rules of Procedure of the Compliance Committee, written comments on the findings, measures and recommendations submitted within 45 days of their receipt by the Party concerned shall be circulated by the Secretariat to the members and alternate members of Committee and shall be included in the Committee's biennial report to the Meeting of the Contracting Parties. Based on these provisions, the Compliance Committee concluded to ask the Secretariat to notify the Party concerned by 15th July 2022.
18. The Compliance Committee also exchanged views concerning further communication concerning the outcome of the proceedings. In particular, the Committee agreed to inform the communicant of the outcome. Some members of the Committee also indicated that the decision should be communicated to the public at large through the official social media of UNEP/MAP.
19. The Compliance Committee, having extensively examined and debated the matter, in accordance with the Procedures and Mechanism on Compliance under the Barcelona Convention and its Protocols, concluded as follows:

Conclusions and Recommendations

- a. **The Compliance Committee adopted the draft decision attached to this report in relation to the communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance concerning compliance by Spain with its obligations under the Barcelona Convention and its Protocols.**
- b. **The Committee asked the Secretariat to notify the Party concerned of its findings, measures and recommendations in writing by 15th July 2022. The Party concerned may comment in writing on the draft findings, measures and recommendations within 45 days of receipt, in accordance with Rule 31, para 2, of the Rules of Procedure of the Compliance Committee.**
- c. **The Compliance Committee decided, through the Secretariat, to inform the communicant of the outcome of the proceedings.**
- d. **The Compliance Committee noted the importance of communicating its findings, measures and recommendations and invited the Secretariat to propose ways of communication and to work with the Committee in this respect by 30th September 2022.**

Agenda Item 5: Effective Functioning of the Compliance Committee

20. The Secretariat introduced Decision IG.25/2 adopted by COP 22 (Antalya, Turkey, 7-10 December 2021), according to which the Contracting Parties to the Barcelona Convention mandated the Secretariat to undertake a consultation process as soon as possible and not later than January 2023 with the Contracting Parties to review the proposed amendments to the Procedures and Mechanisms and to the Rules of Procedure of the Compliance Committee contained in document UNEP/MED CC.17/5 (reissued as document UNEP/MED CC.18/5) and report on the outcome at COP 23. The Secretariat also introduced the document UNEP/MAP CC.18/5 on Amendments to the Procedures and Mechanisms on Compliance and the Rules of Procedures of the Compliance Committee: Way forward in implementing COP Decision IG.25/2, which identifies the main steps that should be followed to meet the January 2023 target. According to this document, the following steps were to take place in view of the consultation process:
 - July-September 2022: Preparation of the explanatory note and final proposal of the draft amendments;
 - 15 October 2022: Documents sent to Contracting Parties for their comments with a deadline of one month;
 - 15 December 2022: Working documents for the online meeting sent out;
 - January 2023: Online meeting of Contracting Parties to discuss the proposed amendments.
21. On the invitation of the Chair, the former Chair of the Compliance Committee for the biennium 2020-2021 informed the Committee about the discussions that took place at COP 22, including the general support of the Contracting Parties to revise the Mechanisms and Procedures and the Rules of Procedure, but also the perplexities of many States concerning the extent of the proposed amendments, which went far beyond what requested by COP 21.
22. The Compliance Committee held extensive debates on its potential further involvement in the revision of the Procedures and Mechanisms and the Rules of Procedure. In the course of the discussion, the following main points were made:
 - a. the proposed amendments to the Procedures and Mechanisms and Rules of Procedure reflect experience gained by the Compliance Committee since its creation in 2008, are quite comprehensive, come exclusively from the intersessional Sub-groups on Procedures and Mechanisms and Rules of Procedure, and touch areas which are core to the functioning of the Compliance Committee, as for example, its membership;
 - b. COP 22 clearly indicated that the amendment of the Procedures and Mechanisms and of the Rules of Procedure has now passed into the hands of Contracting Parties, which will take the final decision concerning the proposed amendments and may adopt them; this is also reflected in the 2022-2023 Programme of Work of the Compliance Committee (COP 22 Decision IG.25/2) nonetheless, the Compliance Committee could still provide explanations concerning the proposed amendments and illustrate the circumstances that have led to the various amendments. In this respect, while some members of the Committee manifested their interest in being further involved in the next steps, others considered that the Committee had already clarified these aspects in document UNEP/MED CC. 16/12, reissued as document UNEP/MED CC. 17/5 and submitted to COP 22 for consideration;
 - c. With respect to the consultation process mandated by COP 22, some participants suggested that representatives of the Compliance Committee should attend the online meeting of Contracting Parties, to be held in January 2023; others suggested that at least one representative of the Compliance Committee should also be invited to attend the 93rd Bureau meeting (Thessaloniki, Greece, 30 November – 1 December 2022). Some participants recalled the activity report of the Compliance Committee, in Section 4, para 7 (A) (2) in which the Compliance Committee concluded to establish a channel of communication with the Bureau and the MAP Focal Points for the Compliance Committee to gather feedback on their recommendations; Contracting Parties took note in COP 22 Decision IG.25/2, para 1, of the

activity report. Further discussions on this point concerned the possibility that the Compliance Committee be represented by its Chair in the course of these meetings;

- d. Some participants suggested that the amendments to the Procedures and Mechanisms should be adopted by the Contracting Parties, while the amendments to the Rules of Procedure should be adopted by the Compliance Committee itself. In this respect, the Secretariat pointed out that, while the Procedures and Mechanisms, in their present version, do not provide any clear rules concerning the organ that should adopt the Rules of Procedure of the Compliance Committee, the Rules, in their original version as well as their amendments, have always been adopted by the COP;
- e. as regards the membership of the Committee and the proposal to limit the Compliance Committee to Members only, the number of members that should form the Committee was amply discussed, since the relevant text in the proposed amendments was still under brackets. In the ensuing discussion, most participants agreed that the Compliance Committee should be composed by fourteen members, while one Member of the Committee considered that, in light of the number of Contracting Parties to the Barcelona Convention and in order to ensure an effective functioning of the Committee, its Members should be limited to nine. The discussion reached a consensual agreement that the Compliance Committee should be composed by fourteen members.

23. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

- a. **The Compliance Committee discussed the open issues of the Procedures and Mechanisms on compliance under the Barcelona Convention and its Protocols as presented in Appendix II of Annex I of Decision 25/2 and agreed that the preferred option for paragraph II(3) is for the Committee to consist of 14 members, keeping the same total number as the current members and alternates. Therefore, in relation to paragraph III (15) of the Procedures and Mechanisms the required quorum would be 10 members.**
- b. **The Committee agreed with the following timeline proposed by the Secretariat in document UNEP/MED CC.18/5:**
 - **July-September 2022: Preparation of the explanatory note and final proposal of the draft amendments;**
 - **15 October 2022: Documents sent to Contracting Parties for their comments with a deadline of one month;**
 - **15 December 2022: Working documents for the online meeting sent out;**
 - **January 2023: Online meeting of Contracting Parties to discuss the proposed amendments.**
- c. **The Committee welcomed the preparation by the Secretariat of the explanatory note on the proposed amendments to the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols and Rules of Procedure of the Compliance Committee, noting that it could be based on the existing relevant work of the Compliance Committee and in particular the explanations provided in the Note by the Secretariat of Document UNEP/MED CC.16/12 and on discussions that took place on this issue during the 18th Meeting of the Compliance Committee.**
- d. **The Compliance Committee recalled the activity report Section 4, para 7(A)(2), attached to Decision IG.25/2, to establish a channel of communication with the Bureau and the MAP Focal Points for the Compliance Committee to gather feedback on their recommendations and reiterated that it is important to be represented at the 93rd Bureau meeting (Thessaloniki, Greece, 30 November – 1 December 2022) and especially the online consultation meeting of Contracting Parties to take place in January 2023 to provide necessary explanations in relation to the proposed amendments.**

Agenda item 6: 2018-2019 National Implementation Reports under Article 26 of the Barcelona Convention: Submission, Timeliness, Completeness and Implementation

24. On the invitation of the Chair, the Secretariat presented COP 22 Decision IG.25/2, which has urged Contracting Parties who have not yet submitted their national implementation reports for the biennium 2018-2019 to do so, as soon as possible, and has invited Contracting Parties to submit their national implementation reports for the biennium 2020-2021 using the online Barcelona Convention Reporting System (BCRS) by December 2022. The Secretariat also informed the Committee that no further submissions had taken place following the 17th meeting of the Compliance Committee.
25. Following their adoption at its 17th Meeting, the Compliance Committee discussed the application of the tested criteria of submission, timelines, completeness and implementation for the preliminary assessment of the national implementation reports for the biennium 2020-2021. Members of the Committee agreed to ask the Secretariat to apply these criteria as a screening tool for the preliminary assessment of national implementation reports.
26. One Member of the Compliance Committee raised the issue of whether the existing criteria allow for an evaluation of the effectiveness of the measures adopted by Contracting Parties, as opposed to their existence. It was recalled that in many cases, when compiling their national implementation reports, Contracting Parties simply provide lists of normative acts. These lists, however, without further commentary, do not allow for a comprehensive evaluation of whether the Contracting Party has been in compliance with its obligations under the Barcelona Convention and its Protocols. In the discussion that followed, some participants underlined the relevance of an evaluation that takes into account the effectiveness of measures adopted and their concrete contribution towards meeting the objectives set by the Barcelona Convention and its Protocols. Other members commented on the challenges that a measurement of effectiveness poses and advanced proposals on how to measure effectiveness. One Member suggested that the Committee should work on indicators of effectiveness. Other members agreed and suggested that the development of indicators relating to effectiveness should be included in the work plan of the Committee.
27. Based on discussion, the Compliance Committee agreed as follows.

Conclusions and Recommendations

- a. **The Compliance Committee agreed to ask the Secretariat to work with the Compliance Committee in applying the tested and living criteria of submission, timeliness, completeness and implementation as a screening tool for the preliminary assessment of national implementation reports submitted for the biennium 2020-2021, with a view towards presenting a report on the preliminary screening by the 19th Meeting of the Compliance Committee.**
- b. **The Compliance Committee welcomed the submission of national implementation reports for the biennium 2018-2019 using the new online Barcelona Convention Reporting System (BCRS), invited Contracting Parties to submit their national implementation reports for the biennium 2020-2021 by the deadline of December 2022, and urged those Contracting Parties who have not yet submitted their national implementation reports for the previous biennia to do so before the 2023 MAP Focal Points Meeting.**
- c. **The Compliance Committee stressed the importance of including effectiveness among the above criteria and decided to include the development of indicators relating to effectiveness in its workplan.**

Agenda Item 7: Place and dates of the 18th Meeting of the Compliance Committee

28. The Compliance Committee discussed the place and dates of its 19th Meeting. In this regard, some Members of the Compliance Committee suggested that the meeting should take place before the meeting of the Bureau in 2023, so that the Bureau may consider the conclusions reached by the Compliance Committee. The Secretariat explained that the agenda of meetings is particularly tight and that a number of factors have to be taken into account in deciding the dates of meetings. Another member proposed that the annual meeting should be extended to more than two days, so as to allow the Compliance Committee to fully consider the items on its agenda. The Secretariat noted that the duration of meetings depends on the agenda and the available resources.
29. Based on discussion, the Compliance Committee agreed as follows.

Conclusions and Recommendations

The Compliance Committee asked the Secretariat to set its next meeting before the 2023 meeting of the Bureau and to propose options for dates as soon as possible, and asked the Secretariat to take into consideration the possibility of extending the duration of the next meeting, depending on the agenda and the availability of resources.

Agenda Item 8: Other Matters

30. The Secretariat informed the Compliance Committee of its participation in June 2022 in a meeting in Geneva involving Regional Seas Programmes and the ESPOO Convention Secretariat. That meeting focused on sharing experiences and discussing issues of Transboundary Environmental Impact Assessment and Strategic Environmental Assessment, as well as potential synergies between the bodies established under the ESPOO Convention and its SEA Protocol, on the one hand, and those established under the Regional Seas Programmes, on the other.
31. In the ensuing discussion, participants agreed on the importance of establishing connections with the ESPOO Convention Secretariat. One participant suggested that the Compliance Committee should include in its work plan the consideration of identifying ways to explore and promote synergies with other Regional Seas Conventions that have mechanisms for compliance, even if these do not take the form of a compliance committee.
32. Based on discussion, the Compliance Committee agreed as follows.

Conclusions and Recommendations

- a. **The Compliance Committee welcomed the collaboration between UNEP/MAP as a UNEP Regional Sea Programme and the ESPOO Convention and its SEA Protocol in relation to the issues of Transboundary Environmental Impact Assessment and Strategic Environmental Assessment.**
- b. **The Compliance Committee decided to include the consideration of this important issue in its workplan.**

Agenda item 9: Conclusions and Recommendations

33. On the basis of a draft prepared by the Secretariat in consultation with the Chairperson of the Compliance Committee, the Compliance Committee agreed on the Conclusions and Recommendations listed under each Agenda item above.

Agenda item 10: Closing of the Meeting

34. The Meeting was closed by the Chairperson of the Compliance Committee, Heba Salah el din Sharawy, on 30 June 2022, at 17:30 pm.

Annex I
List of Participants

List of Participants / Liste des participants

Members / Membres titulaires

Ms. HAMIDI Samira

Member of the Compliance Committee
Algeria

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Ministry of Environment
General Manager for Environmental Economics
Department
Egypt

Ms. TURPanci Aysin

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Mr. RAFTOPOULOS Evangelos

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United Nations Development Programme
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Mr. JUSTE RUIZ José

Catedrático de Derecho Internacional
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Spain

Alternate Members / Membres suppléants

Mr. ZINE Abdelaziz

Ministry of Environment
Director of Legal Division
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Ms. KHOURY Nancy

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and Political Science- the Open University of Israel
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SECRETARIAT TO THE BARCELONA CONVENTION COORDINATING UNIT OF THE MEDITERRANEAN ACTION PLAN

Mr. Ilias Mavroeidis

Programme Management Officer

Ms. Irini Papanicopolulu

Legal Advisor

Annex II
Provisional Agenda

Agenda

- Agenda Item 1:** Opening of the Meeting
- Agenda Item 2:** Adoption of the Agenda and Organization of Work
- Agenda Item 3:** Election of Officers of the Compliance Committee for the biennium 2022- 2023
- Agenda Item 4:** Communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance: Proceedings
- Agenda Item 5:** Effective Functioning of the Compliance Committee
- Agenda Item 6:** 2020-2021 National Implementation Reports under Article 26 of the Barcelona Convention: Submission, Timeliness, Completeness and Implementation
- Agenda Item 7:** Place and dates of the 19th Meeting of the Compliance Committee
- Agenda Item 8:** Other Matters
- Agenda Item 9:** Conclusions and Recommendations
- Agenda Item 10:** Closing of the Meeting

Annex III

FINDINGS AND RECOMMENDATIONS CONCERNING COMPLIANCE BY SPAIN

FINDINGS AND RECOMMENDATIONS CONCERNING COMPLIANCE BY SPAIN

Adopted by the Compliance Committee on 30 June 2022

Members who participated in the consideration of the question of non-compliance and in the elaboration and adoption of the findings, measures and recommendations

Section I Introduction

1. The proceedings originated in 2017, when the Spanish non-governmental organization (NGO) Ecologistas en Acción de la Región Murciana (the communicant), communicated with the UNEP/MAP-Barcelona Convention Secretariat (UNEP/MED CC. 16/7). The communication alleged that Spain (the Party concerned) had serious difficulties in complying with its obligations under the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) and its Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) in relation to the Specially Protected Area of Mediterranean Importance (SPAMI) of Mar Menor and the East Coast of Murcia. Specifically, the communicant referred to the following acts and omissions related to noncompliance with provisions of the Barcelona Convention and SPA/BD Protocol:

- a) that a management plan had not been adopted for Mar Menor (article 7.2(a) of the SPA/BD Protocol);
- b) that no strategies, plans and programmes had been approved and adopted for the conservation of biological diversity and the sustainable use of resources in Mar Menor (article 3.4 of the SPA/BD Protocol);
- c) that the obligation to protect, preserve and manage threatened or endangered species of flora and fauna in Mar Menor had been contravened, because of (1) the loss of 85 per cent of Mar Menor seagrass prairies of threatened species *Pinna nobilis*, (2) the drastic reduction of the populations of the endangered species *Hippocampus guttulatus* and (3) the damage to sponges (species *Tethya aurantium* and *Tethya citrina*) and mollusks (species *Pholas dactylus*) (article 10 of the Barcelona Convention and article 3.1(b) of the SPA/BD Protocol);
- d) that the general obligations to manage the species of flora and fauna of Mar Menor to ensure their conservation, and to regulate or prohibit in Mar Menor activities having adverse effects on such species or their habitats had both been contravened, because (1) irrigated intensive agricultural activities have not been prohibited nor effectively regulated, (2) deficiencies in wastewater treatment infrastructure and sanitation networks still persist leading to untreated nutrient rich wastewater runoff in Mar Menor, especially during summer months and episodes of heavy rainfall, and (3) in 2015 and 2016, there was an ex-post legalization of initially illegal irrigation lands, wells and desalination plants in Campo de Cartagena (article 11.1 and 2 of the SPA/BD Protocol);
- e) that the obligation to prohibit the dumping and discharge of wastes and substances that directly and indirectly have impaired the integrity of Mar Menor had been contravened, because of the high nitrate and phosphorus contents in the Mar Menor lagoon coming mainly from irrigated agriculture (article 6(b) of the SPA/BD Protocol);

- f) that there was no coordination either horizontal (sectorial, between policies) or vertical (between state, regional and local administrations) in implementing the existing laws governing Mar Menor.

2. Based on the information received, the Compliance Committee decided to examine any difficulties encountered by the Party concerned in the implementation of the Convention and its Protocols, in accordance with the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, para 23bis.

3. The present findings and recommendations address the above situation and claims of non-compliance, taking into account the objective of the compliance mechanism, which is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols, taking into account the specific situation of each Contracting Party (Decision IG.17/2: Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, para. 1). In order to do so, the Compliance Committee will first recall the history of the proceedings (Section II) and will present the factual situation at the basis of the communication (Section III). The Committee will then identify the relevant provisions of the Barcelona Convention and SPA/BD Protocol (Section IV). On the basis of the foregoing, the Committee will then evaluate the situation and the actions adopted by the Party concerned, in order to assess whether the Party concerned has complied with its obligations under the Barcelona Convention and the SPA/BD Protocol and to identify difficulties that the Party concerned may be facing and possible ways forward (Section V). The conclusions and recommendations of the Compliance Committee, concerning compliance with the obligations under the Barcelona Convention and its Protocols and suggested measures and action that would facilitate and promote compliance are presented in Section VI.

Section II Proceedings before the Compliance Committee

4. On 12 January 2017, the Spanish non-governmental organization (NGO) Ecologistas en Acción de la Región Murciana, communicated with the UNEP/MAP-Barcelona Convention Secretariat. The communication alleged that Spain had serious difficulties in complying with its obligations under the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) and its Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) in relation to the Specially Protected Area of Mediterranean Importance (SPAMI) of Mar Menor and the East Coast of Murcia.

5. The communication was transmitted to Spain and to the Compliance Committee in preparation for its 13th Meeting (Athens, Greece, 26-27 September 2017). In this meeting, the Committee agreed on the Admissibility Criteria of Relevant Information Sources and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (UNEP(DEPI)/MED CC. 13/12, §29, Annex III), and following them concluded: (1) to appoint Orr Karassin as Rapporteur for the communication in order to provide a summary for consideration at its 14th Meeting (Athens, 27-29 June 2018), as part of the process of assessing the admissibility of the communication, and (2) to ask Ecologistas en Acción de la Región Murciana (the communicant), through the Secretariat, to provide a translation and summary of twelve pages at maximum of its communication in English or French (UNEP(DEPI)/MED CC. 13/12, §31).

6. Following-up on the conclusions of the 13th Meeting of the Compliance Committee, the communicant was asked to provide the requested summary and translation. An English translation and summary of the communication was provided and later on 8 and 17 May 2018, at the request of the Rapporteur, additional supporting information was provided by the communicant.

7. The original translated communication from the communicant and the additional information provided by the communicant were tabled at the 14th Meeting of the Compliance

Committee (Athens, Greece, 27-29 June 2018) (UNEP/MED CC.14/8 and UNEP/MED CC.14/Inf.8). At that meeting, the Rapporteur presented a summary of the original translated communication and additional supporting documents. The Compliance Committee concluded that the Rapporteur, through the Secretariat, would ask the communicant for additional information on a number of matters and that on that basis and building on the information received so far, the Rapporteur would present its findings and a proposal of a draft preliminary decision on admissibility for the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019). The Committee also concluded that Spain (the Party concerned), through the Secretariat, should be informed of the situation (UNEP/MED CC.14/12, §34).

8. Following-up on the conclusions of the 14th Meeting of the Compliance Committee, the communicant provided additional documentation and information at the request by the Rapporteur and the Party concerned was informed of the outcome of the 14th Meeting of the Compliance Committee.

9. The original translated communication from the communicant and the additional information provided by the communicant were tabled at the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019) (UNEP/MED CC.15/9 and UNEP/MED CC.15/Inf.5). At that meeting, the Rapporteur presented her findings and a draft preliminary decision on the admissibility of the communication (UNEP/MED CC. 15/10). On the basis of the Admissibility Criteria of Relevant Information Sources and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Decision IG. 23/2), the Compliance Committee concluded to confer preliminary admissibility to the communication and asked the Secretariat to make arrangements to proceed with the notification of the communication (UNEP/MED CC.15/15, §24).

10. Pursuant to paragraph 15 of the Admissibility Criteria, both the communicant and the Party concerned were notified of the admissibility of the communication by the Compliance Committee. Pursuant to paragraph 18 of the Admissibility Criteria, the Party concerned was also invited to submit written explanations or statements on the matter. The Party concerned sent its response on 20 February 2020.

11. The original translated communication from the communicant and the additional information provided by the communicant (UNEP/MED CC.16/7 and UNEP/MED CC.15/Inf.5) together with the response from the Party concerned and supporting additional documentation provided by the Party concerned (UNEP/MED CC.16/8 and UNEP/MED CC. 16/Inf.6) were tabled at the 16th Meeting of the Compliance Committee (Teleconference, 16-18 June 2020). At that meeting, the Rapporteur presented the communication and the response from the Party concerned. The Compliance Committee agreed in line with paragraph 20 of the Admissibility Criteria to confirm the admissibility of the communication. It also agreed, in line with paragraph 22 of the Admissibility Criteria, to proceed with the examination of the substance of the communication following *mutatis mutandis* the proceedings established in paragraphs 24 to 30 of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Decision IG. 17/2, amended by Decisions IG. 20/1 and 21/1). The Committee further agreed to hold a resumed session of its 16th Meeting, after which both the communicant and the Party concerned will be notified of the procedures to follow for the substantive discussion and if there is any need to provide additional information in preparation for the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021) (UNEP/MED CC. 16/13, §30).

12. At the resumed session of the 16th Meeting of the Compliance Committee (Teleconference, 27-28 January 2021), the Compliance Committee agreed to articulate the proceeding as follows: (1) to invite the Party concerned to submit additional information related to some of the matters raised in its response to the communication, within a period of two months, preferably in English and not exceeding twelve pages in total; and (2) to invite the Party concerned to participate in the

proceedings on the subject matter of the communication to be held at the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021) (UNEP/MED CC. 16/13, §48).

13. Following-up on the conclusions of the 16th Meeting of the Compliance Committee (Teleconference, session 27-28 January 2021), the Chair of the Compliance Committee, through the Secretariat, communicated the outcome of the meeting to Ecologistas en Acción de la Región Murciana (EARM) (the communicant), and Spain (the Party concerned), inviting also the Party concerned to submit additional information related to some of the matters raised in its response to the communication from the communicant and to participate in the proceedings to be held at the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021).

14. The response of the Party concerned to the request of additional information from the Compliance Committee was received within the deadline of two months given according to Paragraph 23.bis of the Procedures and Mechanisms on Compliance. It is contained in document UNEP/MED CC.17/4, which also presents a summary of the facts and findings on the current state of Mar Menor, including outstanding contributing factors and causes, as prepared by an intersessional working group under the coordination of the Chair of the Compliance Committee and the Rapporteur for the communication, Orr Karassin.

15. In the course of the 17th Meeting of the Compliance Committee, a delegation of the Party concerned participated in the proceedings regarding the communication by EARM. Proceedings were carried out in accordance with the following arrangements, agreed upon by the Compliance Committee: (1) introduction and opening of the discussion by the Chair of the Compliance Committee, (2) presentation by the Rapporteur of the undisputed facts and findings on the state of the Mar Menor lagoon and causes and contributing factors, (3) presentation by the Party concerned, (4) discussion with the Party concerned, and (5) closure of the proceedings by the Chair of the Compliance Committee.

16. At the end of its 17th Meeting, the Compliance Committee concluded that more time was needed to deliberate on the comprehensive information provided by the Party concerned to reach an outcome. Accordingly, the matter was tabled for the 18th Meeting of the Compliance Committee.

Section III Summary of the Facts on the Current State of Mar Menor and the East Coast of Murcia

17. The area of Mar Menor and East Coast of Murcia was included in the SPAMI List by the 12th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols (COP12) (Monaco, 14-17 November 2001) (UNEP(DEC)/MED IG. 13/8, Annex IV). The area is located in the Southeast of the region of Murcia (Spain) and consist of various types of protected areas under different regulatory regimes. In particular, Mar Menor hosts a wide variety of habitats as well as important species of flora and fauna. By virtue of its importance for the conservation of biodiversity, Mar Menor and East Coast of Murcia is protected through diverse conservation tools. In addition to its inclusion in the SPAMI List, the area is protected under Natura 2000, RAMSAR sites, Marine Reserves of Fishery Interest, Regional Park, Protected Landscape, Protected Natural Area and Protected Area of Wildlife Species.

18. This section summarizes the main facts and findings on the current state of the SPAMI Mar Menor and the East Coast of Murcia, including outstanding contributing factors and causes, as presented to the Compliance Committee by the communicant (UNEP/MED CC.16/7 and UNEP/MED CC.15/Inf.5) and the Party concerned (UNEP/MED CC.16/8, UNEP/MED CC. 16/Inf.6, UNEP/MED CC. 17/4, and UNEP/MED CC. 17/8).

The eutrophication process of the Mar Menor lagoon

19. Scientific studies submitted by both the communicant (UNEP/MED CC.15/Inf.5) and the Party concerned (UNEP/MED CC. 16/Inf.6) show that the Mar Menor lagoon is suffering from eutrophication, which is a process caused by the enrichment of water due to the supply of nutrients, nitrogen and/or phosphorus, leading to the accelerated growth of algae. One of the symptoms of eutrophication is the proliferation of phytoplankton.

20. The eutrophication process of Mar Menor dates back decades and was exacerbated by the end of 2015, when according to findings by the Spanish Institute of Oceanography, the values of chlorophyll-a, which is an indicator of phytoplankton development, grew sharply, leading to the Mar Menor eutrophication crisis of 2016. As a result, Mar Menor lost 85% of its seagrass prairies, which are endemic to the area and a pillar of the Mar Menor ecosystem (see from the Party concerned: UNEP/MED CC. 16/8, pp. 9-10 and from the communicant: UNEP/MED CC. 16/7, p.8 and UNEP/MED CC. 15/Inf.5, pp.14-15). After 2016, the values of chlorophyll-a decreased. However, the Spanish Institute of Oceanography found that they progressively increased to reach levels in the range of those observed in 2015-2016 by the end of August 2019. In September 2019 a cold front (called “gota fría” or DANA) occurred, after which the chlorophyll-a levels surged higher than the 2016 maximum levels.

21. The surge in the chlorophyll-a levels in September 2019 was attributed to a combination of both oceanographic climatic conditions (the DANA cold front) and a massive input of nitrogen and phosphorus associated with inflows of water and sediment coming from the land, in particular from the farmland around Campo de Cartagena. This massive flow of nutrients into Mar Menor led to the death of benthic organisms and to the increase of toxic compounds, e.g. sulphides, at the bottom of the lagoon. As this toxic layer at the bottom topped up, it led to the death of fish and crustaceans in the water column (see from the Party concerned: UNEP/MED CC. 16/8, pp. 12-17, and UNEP/MED CC. 16/Inf.6, pp. 3-5).

22. As pointed out by the communicant, Mar Menor has been accumulating nutrients reaching a point where the ecosystem has acutely altered and the phenomenon of eutrophication has occurred (UNEP/MED CC. 15/Inf.5, p. 29). The study of the Spanish Institute of Oceanography submitted by the Party points out that eutrophication has caused a profound and increasingly chronic decline in Mar Menor and has made the lagoon critically vulnerable to factors, such as the DANA, which at any moment could trigger acute die-off episodes (UNEP/MED CC. 16/8, p. 19).

The key pressure: the irrigated intensive agriculture in Mar Menor basin

23. There are several human induced pressures on Mar Menor, which have negatively impacted both the lagoon water quality and quantity. Scientific studies submitted by both the communicant (UNEP/MED CC.15/Inf.5) and the Party concerned (UNEP/MED CC. 16/Inf.6) identify those pressures, the most important of which is the irrigated intensive agriculture in Mar Menor basin. Only between 1988 and 2009 the irrigated land mass of the basin increased from about 25.150 hectares to about 60.700 hectares. Since 2009 this transformation to irrigated agricultural production is continuing (see from the communicant: UNEP/MED CC.15/Inf.5, p. 1 and from the Party concerned: UNEP/MED CC. 16/Inf.6, p. 5).

24. The significant expansion of irrigation of Mar Menor basin is the main casual mechanism responsible for the high flow of nutrients that has been affecting the Mar Menor lagoon for decades. The high flow of nutrients from agricultural runoff is mainly responsible for its nutrient enrichment and eutrophication (see from the communicant: UNEP/MED CC.15/Inf.5, p. 3). As highlighted by the Spanish Institute of Oceanography, since the 1980s Mar Menor has been receiving large quantities of nutrients coming mainly from the agricultural runoff in Campo de Cartagena and this continuous

inflow is considered a crucial factor in triggering the eutrophication crisis in 2016 (see from the Party concerned: UNEP/MED CC.16/8, p. 18). More in detail, the intensive irrigation of Mar Menor basin has led to an intensive overexploitation of aquifers and salinization of groundwater by marine intrusion, leading in turn to the desalinization of groundwater. This is a process that generates brines residues with high levels of nitrates which end up entering into the lagoon. (see from the communicant: UNEP/MED CC.15/Inf.5, p. 21 and from the Party concerned: UNEP/MED CC. 16/Inf.6, p. 5).

Other pressures

25. The area of Mar Menor is characterized by intense socio-economic dynamics with a convergence of activities, including irrigated intensive agriculture, which generate pressures on the ecosystems of Mar Menor. These include sports, recreational and tourist activities, such nautical activities with their demand for infrastructure (marinas) and though there is no mining activity in the area, the heavy metals present in the old deposits of mining waste have reached Mar Menor through the drainage systems (see from the Party concerned: UNEP/MED CC. 16/Inf.6, p. 16 and from the communicant: UNEP/MED CC. 15/Inf.5, pp. 1-2 and 17-21).

The current situation and future prospects

26. According to the information provided by the Party concerned, as of May 2021, the parameters indicating the nutrient concentration in Mar Menor (values of chlorophyll-a, nitrates, nitrites and ammonia) showed that Mar Menor had achieved a good ecological status as per those parameters. Furthermore, the water level of the aquifer *Campo de Cartagena* had recovered from depletion, being at a good level now. The Party concerned pointed out that based on a nitrate content simulation exercise, the recovery of the groundwater body of Campo de Cartagena is expected to reach potential by the year 2039. The Party concerned stressed that this is a steadily process with the interim target of Mar Menor achieving a good state by 2027, in transposition of the EU Water Framework Directive.

Section IV The Applicable Legal Framework

27. The Party concerned deposited its instruments of ratification of the Barcelona Convention on 17 February 1999 and of the SPA/BD Protocol on 23 December 1998. The Barcelona Convention and SPA/BD Protocol entered into force for the Party concerned on 9 July 2004 and on 12 December 1999, respectively.

28. In order to evaluate whether Spain has acted in compliance with its obligations under the Barcelona Convention and its related Protocols with respect to the situation in Mar Menor, it is necessary to recall the principal legal obligations pending on States Parties with respect to the protection of species and habitats within their territories. According to Article 4, para 1, Barcelona Convention:

The Contracting Parties shall individually or jointly take all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development.

According to Article 4, para 2, Barcelona Convention:

The Contracting Parties pledge themselves to take appropriate measures to implement the Mediterranean Action Plan and, further, to pursue the protection of the marine environment and the natural resources of the Mediterranean Sea Area as an integral part of the development process, meeting the needs of present and future generations in an equitable manner. For the purpose of implementing the objectives of sustainable development the Contracting Parties shall take fully into account the recommendations of the Mediterranean Commission on Sustainable Development established within the framework of the Mediterranean Action Plan.

29. The Barcelona Convention thus contains a general obligation to prevent and abate pollution and to protect and enhance the marine environment and the natural resources of the Mediterranean Sea area in a sustainable manner. This general obligation is a due diligence obligation which, as explained by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, requires States to “deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result” (ITLOS SDC, Advisory Opinion of 1 February 2011, para. 110). Accordingly, Parties to the Barcelona Convention are required not only to adopt laws and regulations, but also to take administrative measures and enforcement action, exercise administrative control, investigate any alleged violation and provide for sanctions sufficient to deter violations and deprive offenders of the benefits accruing from their illegal activities.

30. The general obligation provided for in Article 4 of the Barcelona Convention is then further specified in numerous other provisions of the Convention and its Protocols, which operationalise and give effect to the general obligation. These obligations, although interrelated, are distinct from the general obligation under Article 4 Barcelona Convention. They therefore need to be complied with on their own merits and their breach will by itself generate non compliance by the State. At the same time, these obligations, being interrelated with the general obligation, provide concrete examples of the measures that States Parties must take in order to comply with the general obligation. Consequently, compliance with the specific obligations under the Barcelona Convention and its Protocols contributes towards compliance with the general obligation. The Committee will therefore consider whether the Party concerned has complied with its specific obligations under the relevant Protocols before concluding on compliance with the obligation under Article 4 Barcelona Convention.

31. The area of Mar Menor constitutes a unique ecosystem which is home to numerous species of flora and fauna, some of them threatened. Under Article 10 Barcelona Convention,

The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered and their habitats, in the area to which this Convention applies.

Spain is therefore under an obligation to protect the area of Mar Menor and its species. In mandating States Parties to protect and preserve biological diversity, the Convention addresses two separate yet interlinked sets of duties: those relating to the protection of marine species of flora and fauna, and those relating to the protection of their habitats, as well as rare or fragile ecosystems. The SPA/BD Protocol further clarifies these duties, listing measures that States have to adopt in order to achieve the environmental aims set by the Protocol and the Barcelona Convention.

32. With respect to the protection of species, States are under the duty to manage species of flora and fauna with the aim of maintaining them in a favourable state of conservation (Article 11, para 1, SPA/BD Protocol) and take necessary measures to protect, preserve and manage threatened or endangered species of flora and fauna (Article 3, para. 1(b) SPA/BD Protocol). Furthermore, States Parties have the obligation to identify and compile lists of endangered species, to regulate and, where appropriate, prohibit activities having an adverse effect on these species, and to carry out

management, planning and other measures to ensure a favourable state of conservation of such species (Article 11, para. 2 SPA/BD Protocol).

33. The protection of rare or fragile ecosystems is often achieved through the creation of a specially protected area (SPA). The creation of a SPA implies a number of duties, including the duty to take the protection measures required (Article 6 SPA/BD Protocol) and to adopt planning, management, supervision and monitoring measures, as well as to ensure all aspects of the active involvement of the public (Article 7 SPA/BD Protocol). Among others, measures must address the prohibition of discharge of wastes and other substances likely, directly or indirectly, to impair the integrity of the SPA (Article 6 (b) SPA/BD Protocol) and the regulation and, if necessary, the prohibition of any other activity or act that might endanger the state of conservation of the ecosystems (Article 6 (h) SPA/BD Protocol). Planning and management duties require the State Party that has created a SPA to, among others, develop and adopt a management plan for the SPA, regulate activities and the terms of related permits, constantly monitor ecological processes, habitats, population dynamics, landscapes as well as the impact of human activities, and actively involve local communities (Article 7 (a), (b), (c), and (e) SPA/BD Protocol).

34. Since the Mar Menor has been designated as a SPAMI area under the SPA/BD Protocol, it is necessary to comply with the relevant provisions governing SPAMIs, including Annex I, Section D SPA/BD Protocol. These provisions, among others, require Parties to define clearly the competence and responsibility with regard to administration, implementation and conservation measures. The protection measures should take into account the strengthening of the regulation of the release or dumping of wastes and other substances, affecting the integrity of the area, and the regulation of any activity or act likely to harm or disturb the species or endanger the conservation status of the ecosystems or species, or impair the natural, cultural or aesthetic characteristics of the area. In addition, a management body should be created, endowed with sufficient powers as well as the means and human resources to prevent and control activities likely to be contrary to the aims of the protected area. Finally, the area should be endowed with a management plan and a monitoring programme.

35. In light of these obligations, the creation of a SPA, and in particular a SPAMI, establishes a special dynamic regime of environmental protection and governance that should lead to the effective and efficient conservation process of that area and its resources for present and future generations (Article 4, para 2, Barcelona Convention). This process implies the adoption of all necessary legislative, administrative, financial, judicial and other measures and their continuous revision and updating in order to adapt to the changing circumstances and address emerging gaps in regulation and enforcement, as well as emerging critical issues and previously unknown pressures. Other relevant Protocols, such as the ICZM and Landbased source Protocol, should be appropriately and effectively implemented in achieving the appropriate environmental status when establishing a SPA, including a SPAMI.

36. The process, furthermore, should actively and effectively involve all actors affected and concerned, and should ensure cooperation that is not only formal, but that effectively creates an important collaborative framework for addressing threats and challenges, thus ultimately contributing towards achieving the objectives set by article 4 Barcelona Convention. The integration of laws, regulations, strategies and measures at the State, regional and local levels is particularly crucial in this respect and should be pursued by all involved actors in good faith and genuine cooperation.

Section V Consideration and evaluation by the Compliance Committee

37. The claims brought up by the communicant in its updated communication dated 28 February 2018, concerned non compliance by the Party concerned with respect to three main sets of

obligations under the Barcelona Convention and the SPA/BD Protocol: (1) the management plan for Mar Menor (SPA/BD Protocol: Article 3.4, Article 7.2 (a) and section D annex I), (2) the protection of flora and fauna of Mar Menor (Barcelona Convention: Article 10 and SPA/BD Protocol: Article 3.1(b), Article 11.1 and 2 and Article 6(b)), and (3) the coordination mechanisms at national, regional and locals levels (SPA/BD Protocol: Article 7.2 (a) and section D annex I and ICZM Protocol: Article 7). The Compliance Committee will address each set of claims separately.

The Management Plan (SPA/BD Protocol: Article 3.4, Article 7.2 (a) and section D annex I)

38. The communicant claims that a management plan has not been adopted that specifies the legal and institutional framework and the management and protection measures applicable for Mar Menor (article 7.2(a)). The communicant further claims that no strategies, plans and programmes have been approved and adopted for the conservation of biological diversity and the sustainable use of resources in Mar Menor (article 3.4). The communicant states that instead the regional government of Murcia has been processing two uncoordinated plans for the last five years which have not been adopted yet: “Integral Management Plan for the Protected Spaces of the Mar Menor and the Mediterranean Coastline of the Region of Murcia” and “Integrated Coastal Zone Management Strategy for the Socio-Ecological System of the Mar Menor and its Surroundings” (see from the communicant: UNEP/MED CC.16/7, p.1 and UNEP/MED CC. 15/Inf.5 pp. 28 and 34-36).

39. The Party concerned states that an “Integrated Management Plan for the Protected Areas of Mar Menor and the Coastal Margins of the Region of Murcia” has been adopted by Decree Law No. 259/2019 of 10 October (Supplement No. 7 of the Official Gazette of the Region of Murcia No. 242 of 19 November 2019) and that the “Integrated Coastal Zone Management Strategy of the Socio-ecological System of Mar Menor and its Surroundings” has been adopted by Decree No. 42/2021 of 31 March. These two pieces of legislation, together with the Law 3/2020 of 27 July about the “Recovery and Protection of Mar Menor” would provide a comprehensive and integrated set of measures for the recovery, conservation and protection of Mar Menor.

40. The Compliance Committee takes note of the adoption, in 2019, of the “Integrated Management Plan for the Protected Areas of Mar Menor and the Coastal Margins of the Region of Murcia”. It therefore considers that, whereas at the time of the communication and its updated version no management plan had been adopted, today Spain can be considered to be in compliance with its obligations under Article 7, para 2 (a) and Article 3, para 4 SPA/BD Protocol, in the measure in which they mandate the adoption of a management plan. At the same time, the Compliance Committee stresses that such plans need to be regularly monitored and updated and to be integrated into the relevant sectoral and intersectoral policies on an ongoing basis and encourages Spain to act accordingly.

Protection of Flora and Fauna and Prevention of Pollution (Barcelona Convention: Article 10 and SPA/BD Protocol: Article 3.1(b), Article 11.1 and 2 and Article 6(b))

41. The communicant claims that the obligation to protect, preserve and manage threatened or endangered species of flora and fauna in Mar Menor has been contravened (article 3.1(b) SPA/BD Protocol). The communicant points out the mortality episodes affecting the seagrass prairies habitats and populations of the threatened species *Pinna nobilis* during the eutrophication crisis of 2016. The communicant further claims infringement of the obligations: (1) to manage the species of flora and fauna of Mar Menor to ensure their conservation, and (2) to regulate or prohibit in Mar Menor activities having adverse effects on such species or their habitats (article 11.1 and 2 SPA/BD Protocol). The communicant submits that activities, both in the lagoon and its basin, threatening the protected flora and fauna, particularly irrigated intensive agriculture activities, causing the

eutrophication crisis in 2016, have not been prohibited nor effectively regulated. The communicant further submits that the deficiency in wastewater treatment infrastructure and sanitation networks, has led, especially in the summer months and during episodes of heavy rainfall, to untreated nutrient rich wastewater runoff, when the capacity of treatment plants is exceeded. The communicant also submits that illegal irrigation, wells and desalination plants exist in Campo de Cartagena, and that in 2015 and 2016 the administrations proceeded with their legalization. The communicant also claims infringement of the obligation to prohibit the dumping and discharge of wastes and substances that directly and indirectly have impaired the integrity of Mar Menor (article 6(b)) and to back its claim points out the high nitrate and phosphorus contents in the Mar Menor lagoon coming mainly from irrigated agriculture (see from the communicant: UNEP/MED CC.16/7, pp. 2 and 8 and UNEP/MED CC. 15/Inf.5 pp. 1 and 33- 36).

42. The Party concerned states that the “Integrated Management Plan for the Protected Areas of Mar Menor and the Coastal Margins of the Region of Murcia”, adopted by Decree Law No. 259/2019 of 10 October (Supplement No. 7 of the Official Gazette of the Region of Murcia No. 242 of 19 November 2019), together with the Decree Law No. 02/2019 of 26 December on the “Integrated Protection of Mar Menor” (Official Gazette of the Region of Murcia No. 298 of 27 December 2019), provide measures to protect and conserve both the Mar Menor lagoon and the protected areas associated with the Natura 2000 network, which are included in the SPAMI (see from the Party concerned: UNEP/MED CC. 16/8, pp. 1 and 4). The Party concerned, furthermore, has submitted that the “Integrated Coastal Zone Management Strategy of the Socio-ecological System of Mar Menor and its Surroundings” adopted by Decree No. 42/2021 of 31 March is the key piece of legislation as regards territory and landscape. It will be complemented by the “Land Management Plan for the Mar Menor River Basin”, which is at the latest stages of adoption.

43. The Party concerned stresses that in the 2019 Periodic Review of the SPAMI Mar Menor, the SPAMI has been scored with 53 points out of 66¹ and further states that following-up actions have been taken to implement the recommendations of the Periodic Review². This includes: (1) the development of a map showing the various protected areas designations within the SPAMI, which forms part of the “Integrated Management Plan for the Protected Areas of Mar Menor and the Coastal Margins of the Region of Murcia”; (2) the establishment of a system of infrastructure to treat and manage waters that drain into Mar Menor through a set of projects in place and ongoing on rain water collection systems and storm tanks to prevent spills into Mar Menor; (3) continuous

¹ The procedure for the revision of the areas included in the SPAMI List was adopted by COP15 (Almeria, Spain, 15-18 January 2008). The purpose of this procedure is to evaluate SPAMI sites in order to determine whether they meet the criteria laid down in the SPA/BD Protocol. To this end, the following parameters are evaluated. Section I: Criteria which are mandatory for the inclusion of an area in the SPAMI List. (1) Mediterranean value of the SPAMI, (2) Legal and institutional arrangements, (3) Management and availability of resources; Section II: Features providing a value-added to the area. (4) Threats and surrounding context, (5) Enforcement of protection measures, (6) Cooperation and Networking and Section III: Follow-up of the recommendations made by the previous evaluation(s). (7) Implementation of the recommendations made by the previous evaluations (UNEP/MED CC. 17/Inf.2).

² 2019 Periodic Review of the SPAMI Mar Menor (UNEP/MED CC. 17/Inf.2). Recommendations: “Develop a map that shows the various protected areas designations that exists within the SPAMI and the areal extent of existing management plans or regulations. Advocate, within the different responsible administrations, for the establishment of the infrastructure necessary to the treatment and management of the waters in the watershed draining in the Mar Menor. The current levels of scuba diving is at an equilibrium with the functioning of the system. It is important that any change of the current quotas should maintain this equilibrium. Decisions should continue to be made on the basis of the monitoring data in addition to an open dialogue with the scuba diving centres and fishermen. It is very important to maintain and increase the control and surveillance in the SPAMI. Take stock of the data being collected on various aspects of climate change and expand the monitoring programme to other areas in the SPAMI (beyond Mar Menor and Cabo de Palos) to better anticipate potential changes in the environment and management actions in the future”.

environmental and monitoring of the ecological and environmental parameters of Mar Menor, with special emphasis on taking physical-chemical data from the waters and the evolution of different populations of flora and fauna that normally inhabit the Mar Menor and that are considered as indicators of the quality of its waters; (4) the closure and remediation of old mining waste sites and the declaration of the *Campo de Cartagena* as “Nitrate Pollution Vulnerable Zone” for which a specific action programme of measures has been developed, including reinforced measures introduced by Law 3/2020 of 27 July 2020; (5) several initiatives to strengthen the protection and conservation of the protected areas included in the SPAMI other than Mar Menor, such as Cabo de Palos-Islas Hormigas Marine Reserve and (6) the implementation of various projects for the conservation and recovery of the different species of threatened fauna in and around the Mar Menor lagoon, including urgent measures to protect the species *Pinna nobilis* and other endangered or threatened species in conjunction with the University of Murcia (see from the Party concerned: UNEP/MED CC. 16/8, pp. 1-5 and UNEP/MED CC. 17/18, para 23).

44. The Party concerned further states that the Levantine-Balearic Marine Strategy, which includes an analysis of pressures and impacts on Mar Menor for the period 2011-2016, shows that as regards to point sources (for example, brine) no spillages of brines into Mar Menor from desalination plants have been identified. Yet, it is noted that in the Comprehensive Report on the Ecological Status of Mar Menor from the Scientific Advisory Committee of Mar Menor, reference is made to the “proliferation of small desalination plants in the area” (see from the Party concerned: UNEP/MED CC. 16/Inf.6, p. 15).

45. In addition, the Party concerned stressed that the irrigated area in the Mar Menor basin had been kept stable over the last 10 years, pointing to the effectiveness of the continuously enforcement and control regime in place. In this respect, the Party concerned noted that the total area of irrigated land in Mar Menor represents on average 43,071 hectares of land. As of May 2021, data showed: (1) that complaint proceedings were initiated affecting 7,197 hectares of land; (2) that disciplinary proceedings followed concerning 6,091 hectares of land out of the 7,197 hectares of land under complaint proceedings; (3) that sanctioning proceedings were concluded regarding 3,507 hectares of land out of the 6,091 hectares of land subject to disciplinary proceedings; and (4) that the closed sanctioning proceedings led to the restitution of 940 hectares of land, representing 2 per cent over the total of 43,071 hectares of irrigated land in Mar Menor (see from the Party concerned: UNEP/MED CC. 17/8, para. 31).

46. The Party concerned stressed the initiatives headed towards more sustainable agricultural activities in the Mar Menor area, such as the ongoing Project for the implementation of precision agriculture technologies and aquifer control in the irrigation community of *Campo de Cartagena* (EUR 1,398,085 million), the key objective of which is to set up a management system for maximizing the efficient use of water, fertilizers and energy in the community of *Campo de Cartagena*. This should improve the environmental sustainability of irrigation in that area, reducing the pressure on Mar Menor (see from the Party concerned: UNEP/MED CC. 17/8, para. 24).

47. Finally, the Party concerned states that mechanisms to monitor compliance are in place and have been reinforced with the adoption of the Law 3/2020 of 27 July on the “Recovery and Protection of Mar Menor”. The Mar Menor Agro-Environmental Unit has been strengthened, resulting in an increase of inspections and penalty proceedings leading to the restitution of 940 hectares of land, the closure of 191 irregular desalination plants, and the application of sanctions to 86 desalination plants in 2021. The enhanced penalty and sanctioning system have resulted in a positive spill-over effect on the development of agricultural activities in Mar Menor by levelling the playing field for those farms in compliance with the rules. The restitution of illegal irrigation land has released water resources, the fair allocation of which is key to advance towards more sustainable agricultural activities in the Mar Menor area. Furthermore, under the recently adopted Farm Inspection Plan, indicators have been developed to objectively assess the degree of effectiveness of

the enhanced penalty and control regime in place. Indicators cover different areas, including governance and planning and environmental management of Mar Menor (see from the Party concerned: UNEP/MED CC. 17/8, para. 24).

48. The Compliance Committee notes that the legislative acts referred to by the Party concerned, in particular Decree Law No. 02/2019 of 26 December 2019 and Law 3/2020 of 27 July 2020, as well as most other actions, have been adopted following the communication by EARM. The Compliance Committee furthermore notes that the Party concerned has adopted not only legislative and regulatory actions, but also administrative, financial, and judicial measures concerning the implementation of the relevant legislation. In this respect, the Compliance Committee considers that Spain has been working since 2019 towards meeting its obligations under the Barcelona Convention and SPA/BD Protocol.

49. Considering the long standing degradation of the Mar Menor sensitive ecosystem which has been going on for decades, even before the adoption of the Barcelona Convention, it seems nonetheless necessary, in light of the persistent critical situation, that further measures should be adopted and that implementation should be further strengthened. For example, while complaints proceedings have resulted in the restitution of previously irrigated land, this still amounts to only 2 per cent of the total irrigated land. The Party concerned, therefore, should continue adopting, revising and implementing measures, also through administrative, financial and judicial means, with a view towards protecting the species of the Mar Menor and their habitats, as well as the entire ecosystem, and prevent and abate pollution of the marine environment and coastal area.

Coordination Mechanisms (SPA/BD Protocol: Article 7.2 (a) and section D annex I and ICZM Protocol: Article 7)

50. The communicant claims that there is no coordination either horizontal (sectorial, between policies) or vertical (between state, regional and local administrations) in implementing the existing laws governing Mar Menor (see from the Party concerned: UNEP/MED CC. 15/Inf.5, p.28).

51. The Party concerned stressed that the diversity of regulatory regimes that apply to Mar Menor has made institutional coordination central to the work of the competent national, regional and local authorities. Central, regional and local administrations have a long record of working hand in hand in enhancing coordinated action in Mar Menor through different channels, including coordinating bodies such as the Mar Menor Council, the Mar Menor Scientific and Advisory Committee and the Mar Menor Inter-Departmental Commission. These well-established bodies have been recently reinforced by Law 3/2020 of 27 July about the “Recovery and Protection of Mar Menor”, which provides for the establishment of an overarching coordinating body: The Inter-administrative Commission for Mar Menor. The formalization of the Commission is ongoing through a “Protocol for inter-governmental coordination and cooperation between the Autonomous Community of Murcia, the General State Administration and the Local Councils” In the interim, enhanced coordination is taken through the Inter-administrative Coordination Forum and the Inter-administrative Technical Commission, which have been holding regular meetings since 2017. The Party concerned referred also to the “Integrated Management Plan for the Protected Areas of Mar Menor and the Coastal Margins of the Region of Murcia” that has been adopted by Decree Law No. 259/2019 of 10 October (Supplement No. 7 of the Official Gazette of the Region of Murcia No. 242 of 19 November 2019). Furthermore, the Party concerned referred to the score of the 2019 Periodic

Review of the SPAMI Mar Menor (53 out of 66), an indication of high-level of achievements in management and coordination ³ (from the Party concerned: UNEP/MED CC. 16/8, p. 4).

52. The Compliance Committee considers that the Party concerned has developed various bodies and instruments aiming at ensuring cooperation between different actors involved in the protection of Mar Menor. In this respect, it can be considered that the Party concerned has complied with its obligations under Article 7, para 2 (a) SPA/BD Protocol, to the extent that this provision mandates the development and adoption of a management plan that specifies the legal and institutional framework. However, these bodies and instruments appear to be effective to a certain point only. In this respect, Annex I, Section D, para 2 SPA/BD Protocol clarifies that the management measures applicable to each SPAMI must be adequate for the achievement of the conservation and management objectives set for the site in the short and long term. Accordingly, relevant provisions of the SPA/BD Protocol do not simply require the State Party to formally adopt measures and plans, but also to ensure that the measures and plans adopted are effective in reaching the conservation aims posed by the Barcelona Convention and SPA/BD Protocol.

53. The Compliance Committee therefore concludes that the Party concerned had adopted a number of actions in compliance with its obligations in an effort to increase cross level institutional coordination. However, the Party concerned still needs to continue its efforts, particularly in ensuring better collaboration and coordination between the Autonomous Community of Murcia, the General State Administration, and the Local Councils. The Party concerned is also invited to consider the further institutionalization and formal participation and involvement of civil society and academic/scientific representatives in the coordination and decision making bodies. In order to reach this objective and fully comply with its obligations, the Party concerned should not only provide for the institutional framework within which such collaboration and coordination should take place, but should also monitor the effectiveness of this framework, operate the necessary amendments and provide for the necessary incentives in order to ensure that collaboration and coordination actually occur regularly and systematically.

Section V Recommendations

54. Having examined the situation concerning the Mar Menor from 2016 to 2021, the Compliance Committee takes note that the Party concerned has engaged in a meaningful process of progressive compliance with its obligations under the Barcelona Convention and SPA/BD Protocol. Up to 2016, few measures had been adopted, resulting in the crisis related to the phenomenon of eutrophication of 2016 and, later, to the crisis of 2019, and pointing towards non-compliance by the Party concerned with its obligations under the Barcelona Convention and its Protocols. Starting from 2019, the Party concerned has adopted numerous legislative, administrative, financial and judicial measures in order to protect the ecosystem of the Mar Menor in a sustainable manner and contrast the key anthropogenic pressures in line with the obligations under the Barcelona Convention and its Protocols..

³ 2019 Periodic Review of the SPAMI Mar Menor (UNEP/MED CC. 17/Inf.2). "This SPAMI [Mar Menor] has achieved a high level of management and coordination between the various agencies with different mandates for protected areas within the SPAMI. This is highly commendable and should continue".

55. The Compliance Committee notes that this process of progressive compliance is still ongoing and further actions need to be taken in order to reach the conservation aims set by the Barcelona Convention and its Protocols. In this respect, the Committee recommends that the Party concerned should continue its efforts and remains at the disposal of the Party concerned in assisting it in its progressive compliance with its obligations. The government of the Party concerned, in preparing legislation, should take into account both the general obligations under the Barcelona Convention and the more specific provisions of its Protocols, in particular, of the SPA/BD Protocol, the ICZM Protocol, and the Landbased Sources Protocol

56. Particularly the Party concerned is invited to consider furthering its implementation and collaborative coordinative efforts by adopting the following measures:

- (1) Making publicly available online in an adequate, timely and effective manner the collected continuous data (and derived indicators) on the physical-chemical properties of the waters of Mar Menor, as well as any continuous or survey data (and derived indicators) on the microbiological and ecological soundness of Mar Menor and in particular the flora and fauna populations of its waters;
- (2) To further enhance civil society and scientific participation in the bodies set to coordinate action, implement and monitor activities around the SPAMI area, in particular the Mar Menor Scientific and Advisory Committee and the Mar Menor Inter-Departmental Commission as well as in the newly established Inter-administrative Commission for Mar Menor. This should be undertaken with the aim of improving the transparency of the policy making and coordination efforts taken, as well as allow for interested civil society and scientific community members to provide input and participate in the process of ensuring the sustainable conservation of Mar-Menor, giving effect to the right of the public to access to information, participation in the decision-making process and access to justice.

57. The Compliance Committee furthermore decides to remain seized of the matter and asks the Party concerned to provide regular annual reports of the progress in the implementation of its obligations under the Barcelona Convention and its Protocols with a view towards measuring the achievement of the interim target of Mar Menor achieving a good state by 2027.

58. On the basis of the foregoing considerations, the Compliance Committee concludes that:

- (1) there has been a situation non-compliance, especially at the time when the communication reached the Secretariat;
- (2) the Party concerned has undertaken serious efforts in ensuring compliance with the Provisions of the Barcelona Convention and its Protocols, in particular through the adoption of legislation and administrative, financial and judicial actions that have favoured an amelioration of the situation in Mar Menor; the Compliance Committee strongly encourages the Party concerned to continue and intensify its efforts;
- (3) the Compliance Committee offers its advice and assistance to the Party concerned with respect to the measures and other activities that should still be adopted within a reasonable timeframe mutually agreed and, more generally, to support the Party concerned in its progressive compliance with the Barcelona Convention and its Protocols
- (4) the Party concerned is invited to update the 19th Meeting of the Compliance Committee in June 2023 on progress following the present meeting and submit via the Barcelona Convention Reporting System the relevant information.

59. The Compliance Committee invites the Secretariat of the Barcelona Convention to inform the Communicant of these findings.